

REMARKS

This Amendment is being filed in response to the Office Action mailed November 12, 2009, which has been reviewed and carefully considered. Reconsideration and allowance of the present application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-15 are pending in the Application, where claims 11-15 have been currently added. Claims 1 and 9 are independent.

Applicant thanks the Examiner for acknowledging the claim for priority and receipt of certified copies of all the priority documents. Applicant further thanks the Examiner for acknowledging receipt and consideration of an Information Disclosure Statement filed on September 27, 2006.

By means of the present amendment, the current Abstract has been deleted and substituted with the enclosed New Abstract which better conforms to U.S. practice. Further, the specification has been amended to correct certain informalities.

By means of the present amendment, claims 1-10 have been amended for non-statutory reasons, such as for better form including beginning the independent claims with 'A' and beginning the dependent claims with 'The'. Such amendments to claims 1-10 were not made in order to address issues of patentability and Applicant respectfully reserves all rights under the Doctrine of Equivalents.

In the Office Action, the Examiner suggested adding headings to the specification.

Applicants gratefully acknowledge the Examiner's suggestion, however respectfully decline to add the headings as they are not required in accordance with MPEP §608.01(a), and could be inappropriately used in interpreting the specification.

In the Office Action, claims 1-10 are rejected under 35 U.S.C. §112, second paragraph for a certain informality in claims 1 and 9. Applicant respectfully traverses this rejection. However, in the interest of advancing prosecution, claims 1 and 9 have been amended to remove the alleged informality. Accordingly, withdrawal of this rejection is respectfully requested.

In the Office Action, claims 1-10 are rejected under 35 U.S.C. §103(a) over U.S. Patent No. 5,372,061 (Albert) in view of EP 1 076 212 A2 (Anderson). Applicant respectfully traverses and submits that claims 1-15, as amended, are patentable over Albert and Anderson for at least the following reasons.

Albert is directed to an espresso/cappuccino apparatus. As correctly noted on page 4, first full paragraph of the Office Action, Albert does not disclose or suggest determining if the boiler is full or empty. Anderson is cited in an attempt to remedy the deficiencies in Albert.

Anderson is directed to a control and method for preventing dry start of an electric water heater. As recited in paragraph [0003], the Anderson method includes "first recording the initial temperature at the single or bottom most heating element. The single or bottom most heating element then is activated for a short period of time followed by

deactivation and a delay after which the final temperature at the bottom most heating element is recorded." (Emphasis added)

It is respectfully submitted that Albert, Anderson, and combination thereof, do not teach or suggest the present invention as recited in independent claim 1, and similarly recited in independent claim 9 which, amongst other patentable elements, recites (illustrative emphasis provided):

the method comprising the following successive acts:
activating the heating element of the boiler during a predetermined length of time;

measuring at least one characteristic of the thermal behavior displayed by the boiler as a consequence of the activating act of the heating element including recording a first temperature at a first time and recording a second temperature at a second time, wherein the first time is after a first time period after the predetermined length of time, and the second time is after a second time period after the predetermined length of time and the first time.

These features, including activating the heating element during a predetermined length of time and then recording two temperatures, are nowhere disclosed or suggested in Albert and Anderson, alone or in combination. Rather, Anderson discloses to first record a first temperature, then activate and deactivate the heater, and then record a second temperature.

Based on the foregoing, it is respectfully requested that independent claims 1 and 9 be allowed. In addition, it is respectfully submitted that claims 2-8 and 10-15 should also be allowed at least based on their dependence from independent claims 1 and 9, as well as their individually patentable elements.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

By 
Dicran Halajian, Reg. 39,703
Attorney for Applicant(s)
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THORNE & HALAJIAN, LLP
Applied Technology Center
111 West Main Street
Bay Shore, NY 11706
Tel: (631) 665-5139
Fax: (631) 665-5101